PEE TEK SU & ORS.

v.

LEE LEK KEE

HIGH COURT MALAYA, IPOH
AJAIB SINGH J
[ORIGINATING MOTION NO. 15 OF 1982]
13 JANUARY 1983

LAND LAW: *Caveat - Application for removal of caveat lodged by respondent - Applicants paid purchase price of land and contract price of building - Took possession of land and building - Possess documents of title and duly executed memorandum of transfer - Unable to get transfer registered - Respondent has also an agreement with owners of land - Whether genuine sale/purchase agreement or was it a money-lending transaction.*

This was an application by the applicants for the removal of a caveat lodged at the instance of the respondent over land held under HS (D) KK 15/78 PT No. 296 Mukim of Kota Lama Kiri and for a further order that the said land be registered in their name.

The applicants by a sale/purchase agreement dated 19 March 1980 purchased the said land from the owners Gloriosa Sdn. Bhd. for a sum of RM40,000 and by another agreement of even date entered into a contract with one Tan Kok Wey to put up a 3 storey shop house for the sum of RM95,000. The appellants had paid the purchase price of the land and the contract price of the building and took possession of the property in August 1981. The documents of title and memorandum of transfer which Gloriosa had given in favour of the applicants were all in the possession of the applicants but they were unable to get the transfer registered because of the caveat lodged by the respondent. Quit rent, assessment and deposit for water and electricity were all paid by the applicants.

The respondent in reply had alleged that he together with his father had in fact purchased the land from Gloriosa by an agreement dated 1 February 1980 together with a shop to be built thereon for a sum of RM120,000 and they had paid RM108,000 leaving a balance of RM12,000. Gloriosa had executed in escrow a transfer in their favour and delivered the title deed to the solicitors acting for themselves and for Gloriosa. Tan Kok Wey, a director of Gloriosa had stated in his affidavit that the transaction between them and the respondent was a money-lending transaction and set out the various sums of money paid back to the respondent and his father by way of interest and that the property was in fact sold by Gloriosa to the applicants.

Held:

[1] Even without the benefit of hearing and seeing the deponents of the various affidavits in this case, the Court was inclined, in the light of all the facts and surrounding circumstances, to accept the statements in the affidavit filed on behalf of the applicants as true.

[2] The denials by the respondent over the assertions made in the affidavits put in by the applicants do not in any way distract from the fact that the applicant's case to have the caveat removed is stronger than the respondent's case to have the caveat remain against the land.

[3] There was no suggestion that if the caveat was removed any irreparable damage will be caused to the respondent or to his father.

[4] In all the circumstances, therefore, the Court was of the view that on a balance of convenience the caveat should be lifted forthwith and accordingly an order was made in terms of the notice of motion with costs.

[Order in terms.]

Legislation referred to:
National Land Code 1965, s. 327

For the applicants - G. Sivapragasam; M/s. Thevin Chandran Siva & Chong
For the respondent - S. N. Leow; M/s. S.N. Leow & Co.

JUDGMENT

Ajaib Singh J:

The applicants in this case applied for the removal of a caveat lodged at the instance of the respondent over land held under HS (D) KK 15/78 PT No. 296 Mukim of Kota Lama Kiri. They also prayed for a further order that the said land be registered in their name.

The brief facts leading to the application as can be gathered from the various affidavits in this case are as follows. On 19 March 1980 the applicants entered into an agreement to buy the land from the owners Gloriosa Sdn. Bhd. for a sum of RM40,000 and by another agreement of even date they entered into a contract with one Tan Kok Wey to put up a 3 storey shop house for the sum of RM95,000. The purchase price of the land and the contract price of the building have been paid and after the shop had been erected the applicants took possession of the land and shop in August 1981. The applicants are also in possession of the documents of title and memorandum of transfer which Gloriosa had given in favour of the applicants but they are unable to get the transfer registered because of the caveat lodged by the respondent. Quit rent, assessment and deposits for water and electricity have all been paid by the applicants.

The respondent in reply alleged that he together with his father Lee Ah Kong had in fact purchased the land from Gloriosa by an agreement dated 1 February 1980 together with a shop to be built thereon for a sum of RM120,000. They have paid RM108,000 leaving a balance of RM12,000. Gloriosa had executed in escrow a transfer in their favour and delivered the title deed to the solicitors acting for themselves and for Gloriosa.

I agreed with the submission by learned Counsel for the applicants that the applicants' agreement with Gloriosa was a genuine sale and purchase agreement and that the respondent's and his father's transaction with Gloriosa appeared to be in the nature of a money-lending transaction. The building has been completed, all monies have been paid and the applicants have taken possession of the land and the shop house. Also they have with them all the title deeds and the transfer forms. The applicants have also paid the assessment and quit rent and for electricity and water.

Tan Kok Wey a director of Gloriosa stated in his affidavit that the transaction between Gloriosa and the respondent was a money-lending transaction and that the property was in fact sold by Gloriosa to the applicants. He also set out the various sums of money paid back to the respondent and his father by way of interest and stated that "our company is prepared to re-pay the respondent the loan less the amount of interest already paid to him." Even without the benefit of hearing and seeing the deponents of the various affidavits in this case I feel inclined in the light of all the facts and surrounding circumstances to accept the statements in the affidavits filed on behalf of the applicants as true.

The respondent and his father made no attempt to enforce their agreement against Gloriosa although the completion date of the transaction was 6 months from the date of the agreement. The respondent explains this by saying the completion date was extended from time to time at the request of Gloriosa and he has exhibited a copy of one such extension for the period from 1 March 1981 to 30 June 1981. On 23 April 1982 the respondent and his father Lee Ah Kong filed a suit against Gloriosa, Tan Kok Wey and six others claiming *inter alia* specific performance of their agreement with Gloriosa. The suit was filed after the applicants had made the present application on 16 March 1982 by way of originating motion which was served on the respondent on about 22 March 1982.

It is significant also to note that when the respondent and his father entered into the agreement for the purchase of the land and the shop house they also on the same date gave an option to Gloriosa for the repurchase of the shop house and the land for the same price with the option exercisable within 6 months of the date of the agreement. This appears to be consistent with the transaction being a money-lending transaction with the sale agreement as a security for the money lent. The fact that extensions were given by Gloriosa to the respondent and his father extending their agreement of 1 February 1980 is also not inconsistent with the transaction being a money-lending transaction. After all the respondent and his father were getting interest on the sum they had given to the applicants and they certainly did not appear to be in any hurry to enforce the agreement.

The denials by the respondent over the assertions made in the affidavits put in by the applicants do not in any way distract from the fact that the applicants' case to have the caveat removed is stronger than the respondent's case to have the caveat remain against the land. There is no suggestion that if the caveat is removed any irreparable damage will be caused to the respondent or to his father. Even in their civil suit the respondent and his father while claiming specific performance of the agreement which they had entered into with Gloriosa have in the alternative claimed for the refund of the sum of RM108,000 which they said had been paid by them to Gloriosa and in addition they claim damages for fraud against Gloriosa and Tan Kok Wey and further damages for breach of contract.

In all the circumstances therefore I was of the view that on a balance of convenience the caveat should be lifted forthwith and I accordingly made an order in terms of the notice of motion with costs.

Also found at [1983] 1 CLJ 208